

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Michael Fody, III

BKY 12-45009 (RJK)

Debtor

Paul M. Gayle-Smith

ADV 12-04298

Plaintiff

v.

Michael Fody, III

Defendant

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came before the court for trial on June 17, 2013 shortly after 9:00 o'clock a.m. on Plaintiff's complaint seeking relief under 11 U.S.C § 523(a)(2)(A) to prevent discharge of a debt owed him because of alleged fraud by the Defendant. The court now makes the following findings:

FINDINGS OF FACT

1. On December 11, 2007, Plaintiff and Defendant entered into a written agreement by which Plaintiff, an attorney, would represent Plaintiff in a custody case in which his wife alleged sexual abuse and sought reduced and supervised visitation of the minor child.
2. In January 2008, Defendant breached the written fee agreement by failing to pay an overdue retainer fee.

3. To induce Plaintiff to continue to represent him, Plaintiff made a number of intentionally false statements regarding the size and existence of his real property and his retirement, savings and investment accounts. In addition, Defendant offered to sell his specified assets in the future to pay off any debts when he reached retirement age and or when the stock or investments reached maturity. Plaintiff promised and to make regular periodic payments in the interim.
4. Plaintiff justifiably relied on Defendants false representation to extend him credit in the form of legal representation which Defendant promised to pay for in installments until he sold off his assets.
5. Defendant only made rare and small payments, never stayed current with his overdue balances and never sold any of his assets to pay down the debt owed to Plaintiff.
6. On August 29, 2012, Defendant filed a voluntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code seeking discharge of the debt otherwise owed to Plaintiff listing it as \$70, 000 (actually \$173, 265) and claiming no available non-exempt assets with which to pay Plaintiff or other creditors.
7. Plaintiff filed the subject complaint to prevent improper discharge of Debtors' substantial debt based on the misrepresentations and actual fraud in the procurement of the credit from Plaintiff under 11 U.S.C. § 523 (a)(2)(A).
8. After Plaintiff reviewed Defendant's voluntary petition for bankruptcy he learned that Debtor did not list various real property, savings, stocks, retirement accounts he had previously claimed to own. Specifically, in his petition, Defendant claimed not to own any real property and to own less than a small fraction of other assets previously claimed. Defendant also claimed more than a sufficient amount of other assets (for with he

claimed an exemption) with which he could repay at least a substantial portion of the legal fee earned by Plaintiff.

9. On October 12, 2012, Defendant emailed to Plaintiff a birthday greeting in which he informed him that he now had now legal duty to repay his debt and that his idea of “moral obligation” only required a partial repayment no matter what the actual size of the debt might be determined to be.

10. On November 30, 2012 the court notified Plaintiff that payment of a dividend was now determined possible.

CONCLUSIONS OF LAW

1. Defendant’s debt to Plaintiff for legal fees should not be discharged because of false representations and actual fraud under 11 U.S.C. 523(a)(2)(A).

IT IS THEREFORE ORDERED

Accordingly, Defendant’s debt to Plaintiff is excepted from discharge.

Dated:

Robert J. Kressel
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Michael Fody III,

BKY 12-45009-RJK

Debtor

Paul M. Gayle-Smith,

ADV 12-4298

Plaintiff,

v.

Michael Fody III,

Defendant.

CERTIFICATE OF SERVICE

I certify that I filed the foregoing document via the court's electronic filing system which resulted on service on all parties of record, including on counsel for Defendant, Dave Burns, on this day, June 11, 2013.

LAW OFFICES OF

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